

## **REMARKS**

The present Amendment is in response to the Examiner's Office Action mailed April 30, 2008. Claims 1-14 were previously canceled and claim 25 is herein canceled. Claims 15, 16, 18, 21, 24, 27, 30, 33, 34, 36, and 39 are amended. Claims 42-45 are new. Claims 15-24 and 26-45 are now pending in view of the above amendments.

Applicant respectfully request reconsideration of the application in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding. Also, Applicant's arguments related to each cited reference are not an admission that the cited references are, in fact, prior art.

### **I. CLAIM REJECTION UNDER 35 U.S.C. § 102(b)**

The Examiner rejects claims 15-41 under 35 U.S.C. § 102(a) as being anticipated by U.S. Pat. No. 5,287,636 to Neufeldt (hereinafter "NEUFELDT") in view of U.S. Pat. No. 2,271,444 to Schutz *et al.* (hereinafter "SCHUTZ").

“In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); M.P.E.P. § 2141.02.

“To reject a claim based on an obvious to try rationale, the Examiner must articulate the following:

(1) a finding that at the time of the invention, there had been a recognized problem or need in the art, which may include a design need or market pressure to solve a problem;

(2) a finding that there had been a finite number of identified, predictable potential solutions to the recognized need or problem;

(3) a finding that one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success; and

(4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness. M.P.E.P. § 2143.

The claims have been amended to overcome the rejections under 35 U.S.C. § 103(a). NEUFELDT discloses a vehicle 10 with a side loading bucket assembly 35. Col. 2, ln. 14-16, 32-40. The vehicle 10 includes a body 15 with a material receiving compartment therein positioned above an axle joining the wheels that support the truck. Col. 2, ln. 14-31; FIGS. 1 and 4. SCHUTZ discloses a vehicle with a rear loading bucket assembly 19 (FIG. 1).

However, neither NEUFELDT nor SCHUTZ teaches or suggests each and every element set forth in independent claims 15, 24, and 33 as amended herein. Among other elements that both NEUFELDT and SCHUTZ fails to teach or suggest is a chute that extends from the rear of the vehicle and extends substantially the width of the vehicle.

The recited claims solve the problem of providing a loading member that is easy to fill manually or from a wheel barrow with debris and other material and then transfer that material to a storage area without spilling it onto the ground. Independent claims 15, 24, and 33 includes low side and rear walls to allow a user to load material into the receiving member directly from a wheel barrow and the like without raising the material to the loading height of the buckets in NEUFELDT and SCHUTZ. *See* specification page 1, lines 25-27 and FIGS 1-4 in application. The low side and rear walls of the receiving member require a chute to receive and prevent the material in the receiving member from spilling out of the receiving member and onto the ground as the receiving member is raised into the transfer position.

Notwithstanding the examiner's arguments, both NEUFELDT and SCHUTZ teach variations of bucket assemblies, not assemblies using any form of a chute. In other words, a chute is *not required and therefore not taught or suggested* in either NEUFELDT and SCHUTZ because the high walls of the bucket, a disadvantage to loading directly from a wheel barrow, retain the materials and eliminate the need for a chute as the bucket is emptied directly into the storage area.

The Examiner apparently conflates the discrete chute and receiving members of the independent claims to fit the description of the bucket assemblies in NEUFELDT and

SCHUTZ. The Examiner apparently implicitly recognizes this point because he argues that the buckets of NEUFELDT and SCHUTZ form the chute of the independent claims in section 1.1 (page 1 of the Office Action) of the office action, yet the bucket allegedly also forms the receiving member and its retaining walls as recited in the dependent claims as set forth in section 1.2 (page 1-2 of the Office Action). However, the bucket of NEUFELDT and SCHUTZ cannot be *both* the chute *and* the receiving member recited in the claims and the Examiner fails to explain *why* it would be obvious to one having skill to conclude such a thing. Nor does the Examiner explain *why* it would be obvious to one having skill in the art to modify either NEUFELDT and SCHUTZ to include an unnecessary chute assembly in an apparatus that uses a bucket with tall sides such as those taught.

Thus, the Examiner's rejection is unsound because the prior art cited does not address (1) the difficulty of loading material into large buckets with tall sides and/or transferring material from a receiving member with low sides into a storage area without spilling it; (2) the prior art does not address the problem solved by the application; and, (3) since the prior art does not identify known, potential solutions, no logic is provided as to why one having skill in the art would solve the problem spontaneously.

Nonetheless, claims 15, 24, and 33 have been amended to further distinguish them from the prior art.

Claim 15 is amended to recite a receiving member with a contoured surface that allows for the easier transfer of materials from the receiving member, as disclosed in the

specification on page 6, lines 1-4. The prior art does not teach or suggest such a contoured surface.

Claim 24 is amended to recite a height of the side walls selected to retain the material in the loading area but less than the top of the rim of the tire of the vehicle. Neither NEUFELDT nor SCHUTZ teaches or suggests a receiving member with low side walls for ease of loading from a wheel barrow and for use with a chute for the reasons explained above.

Claim 35 is amended to recite the operation means with greater specificity, which neither NEUFELDT nor SCHUTZ teaches or suggests.

Neither NEUFELDT nor SCHUTZ teaches or suggest each of the elements amended independent claims 15, 24, and 33. Further, the Examiner fails to address the necessary elements of the “obvious to try” rationale that provides the alleged basis for the 35 U.S.C. § 103(a) rejection. Therefore, the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 15, 24, and 33 is respectfully requested.

Because claims 16-23 depend from allowable independent claim 15, the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 16-23 is respectfully requested.

Because claims 26-32 depend from allowable independent claim 24, the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 26-32 is respectfully requested.

Because claims 34-41 depend from allowable independent claim 33, the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 34-41 is respectfully requested.

### **CONCLUSION**

In view of the foregoing, Applicant believes that claims 15-24 and 26-45 as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 2nd day of September, 2008.

Respectfully submitted,

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